

Petitioner-Appellant Lucino Martinez Magno appeals the denial of his motion to correct error in the dissolution of his marriage to Respondent-Appellee Laura Gonzalez. We affirm.

In May 2006, Lucino and Laura met with attorney Jay Lavender to discuss the dissolution of their marriage, indicating they were in agreement on all material matters. During the meeting, Lavender took notes on an intake dissolution form that he developed and has used over the years. Lavender's notes indicate that Lucino was to receive the parties' 1995 Nissan Pathfinder and Laura was to receive the parties' 2000 Nissan Xterra. Lavender subsequently prepared a dissolution petition on behalf of Lucino as the petitioner using the notes on the intake dissolution form. A proposed agreed entry signed by both parties was also filed with the trial court. In July 2006, the trial court entered the dissolution order, which was based upon the agreed entry.

In September 2006, Laura filed a Trial Rule 60(B) motion for relief from judgment wherein she asked the court to set aside the dissolution decree because of mistake, fraud, or excusable neglect. At a hearing on the motion, Laura testified that the dissolution decree did not reflect the terms of the parties' agreement. Specifically, Laura testified that she thought she was getting custody of the parties' children, and that Lucino was getting all of the property. According to Laura, she received nothing in the dissolution decree.

Lucino, on the other hand, testified that Laura told him he could have the children and the property, and only said that she thought she was going to get the three children when

her parents found out about the agreed entry. Lavender's intake notes supported Lucino's testimony. The testimony of Lavender's receptionist, Karen Hordon, further supported Lucino's testimony. At the hearing, the trial court apparently noticed that despite Lavender's notes regarding the disposition of the parties' property, the dissolution decree awarded both vehicles to Lucino.

Following the hearing, the trial court entered an order that provides in pertinent part as follows:

The Court DOES NOW FIND that Respondent, Laura Gonzalez, is able to read and write English and has a GED.

The Court FURTHER FINDS that Respondent, during the pendency of the dissolution of the marriage, had sufficient opportunity to review documents prepared by Petitioner's counsel and Respondent was offered said documents to review and [was] informed that documents could be reviewed by separate counsel.

The Court FURTHER FINDS that [Laura's] testimony is not credible.

The Court FURTHER FINDS that there is a scrivener's error in the Decree of Dissolution in that [Laura] should have been awarded a Nissan Xterra.

IT IS THEREFORE, ORDERED, DECREED, AND ADJUDGED that [Laura's] motion, pursuant to Indiana Trial Rule 60, be and it is hereby denied.

IT IS FURTHER ORDERED AND ADJUDGED that the Decree of

Dissolution of Marriage is hereby amended and [Laura] is awarded the Nissan Xterra pursuant to Trial Rule 60(A).

Appellee's Appendix at 9. In September 2007, Lucino filed a motion to correct error, which the trial court denied. Lucino appeals.

The sole issue for our review is whether the trial court erred in denying the motion to correct error. The denial of a motion to correct error is within the broad discretion of the trial court, and we will reverse only upon an abuse of that discretion. *Beall v. Mooring Tax Asset Group*, 813 N.E.2d 778, 783-84 (Ind. Ct. App. 2004). An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it. *Id.*

In this case, the trial court amended the dissolution decree pursuant to Indiana Trial Rule 60(A), and awarded the Xterra to Laura. Trial Rule 60(A) provides in pertinent part as follows:

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the trial court at any time before the clerk issues its Notice of Completion of Clerk's Record. The trial court on its own initiative may make such corrections . . .

As a general rule, T.R. 60(A) permits the trial court to correct clerical mistakes and errors in the record that arise from oversight or omission. *Keybank National Association v. Michael*, 770 N.E.2d 369, 375 (Ind. Ct. App. 2002), *trans. denied*. The reason for this rule is that, in the case of clearly demonstrable mechanical errors, the interests of fairness outweigh

the interests of finality. *Id.* “Clerical error” in this context has been defined as a mistake by a clerk, counsel, judge, or printer that is not the result of judicial function and cannot reasonably be attributed to the exercise of judicial consideration or discretion. *Id.*

Here, the error that the trial court sought to correct concerned the dissolution decree’s failure to award Laura the Xterra as set forth in the intake form. Where the intake form noted that Laura was to receive the Xterra, and Lavender testified that the proposed agreed entry “mirrored” the information contained in the intake form, the trial court did not abuse its discretion in using T.R. 60(A) to amend the dissolution decree and award Laura the Xterra. Transcript at 41.¹

Affirmed.

ROBB, J., and BARNES, J., concur.

¹ In support of his motion, Lucino submitted an affidavit wherein a paralegal in Lavender’s office averred that he spoke on the phone with Lucino after Lavender completed the intake form, and Lucino informed the paralegal that Lucino, not Laura, was to be awarded the Xterra. The trial court was within its discretion to rely on the testimony of attorney Lavender rather than an affidavit from a paralegal. We find no abuse of the trial court’s discretion.